78-1417

Supreme Court, U. S.
FILED
MAY 1 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM 1979

NO. 78-1471

BRYAN M. HANSEN,

Appellant,

vs.

MINNESOTA STATE BOARD OF BAR EXAMINERS, et al.,

Appellees.

On Appeal From The
Supreme Court of Minnesota

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

VINCENT JANTZ
1111 N. State College Bl.
Fullerton, CA 92631
Ph: (714) 738-1000

Attorney for Appellant

Table of Authority

CASES:	PAGE
Baxtrom v. Herold, 383 U.S. 107(1966)	2
The Bank of the United States v. The Bank of Georgia,10 Wheat.333(1825)	6
Carrington v. Rash, 380 U.S.89(1965)	3
Graves v. Minnesota, 272 U.S.425(1926)	3
Keenan v. Board of Law Examiners of the State of North Carolina,317 F.Supp. 1350 (1970)	6
Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32 (1928)	3
Paul v. Virginia, 8 Wall. 168 (1869)	4
Royster Guano Co. v. Commonwealth of Virginia,253 U.S. 412 (1920)	3
Sistare v. Sistare, 218 U.S. 1 (1910)	4

RULES:

Rule 16(4)- Rules of the United States Supreme Court	1
Rule II(4)- Rules for Admission to the Bar, Minnesota	3
Rule VIII(1)- Rules for Admission to the Bar, Minnesota	3

STATUTES:

Minnesota Statutes §481.02(6)	4

CONSTITUTIONAL PROVISIONS: United States Constitution; Article IV, sections 1 & 2 14th Amendment, "Equal Protection" clause	3

IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM 1979

No. 78-1417

BRYAN M. HANSEN,

Appellant,

v.

MINNESOTA STATE BOARD OF BAR EXAMINERS, et al.,

Appellees.

On Appeal From The Supreme Court of Minnesota

Brief in Opposition to Motion to Dismiss Appeal

Appellant, pursuant to Rule 16(4) of the Rules of the Supreme Court of the United States, presents this Brief in Response to Appellee's Motion to Dismiss Appellant's Appeal.

ISSUES PRESENTED

1. Does the Appeal state a substantial Federal Question?

2. Does the lower court judgment rest on an adequate non-federal basis?

ARGUMENT I

THE APPEAL STATES A SUBSTANTIAL FEDERAL QUESTION.

"In licensing attorneys there is but one constitutionally permissible state objective: the assurance that the applicant is capable and fit to practice law." Keenan v. Board of Law Examiners of the State of North Carolina, 317 F. Supp. 1350, 1359 (1970).

Appellee is correct in stating that this case deals with residency requirements. Yet, it remains one of the few cases to lay out the constitutional tests which bar examinations must meet. In lieu of this, the series of cases backing up the point that, "... Legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause (14th Amendment) does require that, in defining a class subject to legistation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made'"; have great relevance and impact. Baxtrom v. Harold, 383 U.S. 107, 111(1966);

Carrington v. Rash 380 U.S. 89, 93 (1965); Louisville Gas v. Coleman, 277 U.S. 32, 37 (1928); Royster Guano Co. v. Commonwealth of Virginia, 253 U.S. 412, 415 (1920).

Minnesota has created two classes of applicants with its Rule II (4), Rules For Admission To The Bar. The classes are those who have graduated from approved law schools (ABA), and those who have not. When this Rule is read in conjunction with Rule VIII of those same rules, we see a very apparent constitutional infirmity.

Rule VIII(1) requires that attorneys from other states also be graduates of ABA approved Law Schools. This means that legal experience and accomplishments are not considered. This statute is over-inclusive and is arbitrary and capricious. It has the effect of keeping eminently qualified attorneys out of the state.

The Graves v. Minnesota,272 U.S. 425 (1926) case was cited by the Appellee. This case interpreted a Minnesota statute, now nearly a century old, and its requirement that prospective Dentists must graduate from approved Dental Schools. A careful reading of the lower courts ruling in that case; Graves v. State of Minnesota, 201 N.W. 933 (1925); gives no indication that Graves did in fact ever attend any Dental School. This case is easily differentiated, from the case at bar, by its facts.

Article IV., of the Constitution of the United States, states in pertinent part that, "Full Faith and Credit shall be given in each State to the public Acts,

Records and Judicial Proceedings of every other State." (Sec. 1) "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." (Sec. 2)

The court has utilized these sections to guarantee that money judgments enforceable in one state are given effect in another. Sistare v. Sistare, 218 U.S. 1 (1910). That citizens of one state are insured the same rights to happiness and property as those of another state, and they are secured the equal protection of their laws. Paul v. Virginia, 8 Wall. 168, 180 (1869).

The state of California has made its judgment that the Appellant is qualified to practice law in California. Minnesota will allow Appellant to appear in its courts, pro hac vice, Minnesota Statutes §481., 02(6). Leaving within the judges discretion, the issue of Petitioners' competence. If busy trial court judges are able to pass on the competency of attorneys, then how can the Minnesota State Board of Bar Examiners, who were established to do this, find the task over burdensome? Within this reasonable context we suggest that the Minnesota Statutes in question, do work an unnecessary hardship and are inconsistent with Article IV, Section 1 and 2 of the United States Constitution, and are therefore invalid.

ARGUMENT II

THE JUDGMENT OF THE SUPREME COURT OF MINNESOTA DOES NOT REST ON AN ADEQUATE NON-FEDERAL BASIS.

Appellee has alleged that Minnesota utilizes a two-pronged approach to control admissions to the bar. Graduation from an ABA approved Law School, and its bar examination. It is further argued that appellant chose to attend a non-ABA approved Law School and he therefore failed to comply with the requirements and that this presents a non-federal basis for the decision. In effect it is argued by the Appellee, that the United States Supreme Court is precluded from interference with Minnesota's approach to control admissions to its Bar.

Appellant reiterates the argument stated in his Jurisdictional Statement, that Minnesota has never set guidelines for the quality and content of Law School instruction. Instead the legislature has delegated that duty to the American Bar Association. Appellee has pointed to no specific weakness in Appellant's education and preparation in becoming an attorney. Instead, Appellee has only pointed out that Appellant's Law School has never sought approval by the A.B.A.

Appellant contends that while Minnesota may establish its own standards, these standards may not be framed in such an over-broad manner as to preclude an entire

class of applicants who have proven their competence, from even taking the bar examination in Minnesota.

This class, of which Appellant is a member, is composed of graduates of a Law School approved by the State Bar of California, and further, these graduates have been admitted to practice in a state. A statute which excludes an entire class of qualified people, cannot rest on an adequate non-federal basis. Administrative inconvenience in determining the qualifications of each of the members of this class should not stand in the way of setting up a procedure for screening these applicants. This last point was fully explored in Keenan v. Board of Bar Examiners (supra) at page 1360.

Appellant concedes his awareness of the requirements for graduation from an ABA approved law school as a general applicant for the Minnesota Bar examination. At the time he embarked upon his law school matriculation he was also aware that a petition for waiver of this requirement was possible, but of uncertain results. Barring the approval of such a waiver, Appellant could look forward to the possibility of admission on motion following five years of practice in another state. This possibility has been extinguished by the State's action in amending its rules on March 30, 1977 (just two (2) months prior to Appellants graduation) to require graduation from an ABA approved Law School prior to admission on motion. Such action could not be foreseen by Appellant. This Court's decision in The Bank of the United States v. The Bank of Georgia, 10 Wheat.

(U.S.) 333 (1825) is quite appropriate to Appellants Argument, in that Appellant was "equally innocent," had "no means of knowledge" of the change at the time he entered Law School and to burden him with the "loss would indeed be inequitable."

CONCLUSION

The issues presented by the appeal have never been directly addressed by the court. For the reasons stated in this brief and in our Jurisdictional Statement, we ask that the Appellees' Motion to Dismiss our Appeal be denied, and that our case be heard by the court.

April 30, 1979

Respectfully submitted,

Vincent Jantz
1111 N. State College Bl.
Fullerton, CA 92631
Ph: (714) 738-1000
Attorney for Appellant